

SEC42

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

)

KIK INTERACTIVE, INC.) File No. HO-13388-A

WITNESS: Michael Hourigan

PAGES: 1 through 66

PLACE: Securities and Exchange Commission

44 Montgomery Street, Suite 2800

San Francisco, California 94104

DATE: Tuesday, July 24, 2018

The above-entitled matter came on for hearing,
pursuant to notice, at 9:47 a.m.

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APPEARANCES:

On behalf of the Securities and Exchange Commission:

BRENT MITCHELL, ESQ.

STEPHAN SCHLEGELMILCH, ESQ.

JAMES MURTHA, ESQ.

(Via Videoconference)

Securities and Exchange Commission

Division of Enforcement

100 F Street NE, Washington, D.C. 20549

On behalf of the Witness:

MICHAEL COHN, ESQ.

ALEX POPESCU, ESQ.

1345 Avenue of the Americas, Floor 2

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Also Present:

Jefree Anderson, Videographer

Fernando Bernardo, Paralegal

Kara Krakowar

Tyler Martin

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C O N T E N T S

WITNESS

EXAMINATION

Michael Hourigan

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EXHIBIT

DESCRIPTION

IDENTIFIED

1 Formal Order

7

72 Subpoena

63

73 E-mail chain,

28

SEC-PBDigital-E-0000348 to 351

74 E-mail, SEC-PBDigital-E-00086

34

through 95

75 E-mail chain,

46

SEC-PBDigital-E-0000429 to 430

76 Executed SAFT contract

55

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P R O C E E D I N G S

THE VIDEOGRAPHER: Here begins DVD one in the

testimony of Michael Hourigan in the investigation by

the U.S. Securities and Exchange Commission in the

matter of Kik Interactive, File Number HO-13388-A.

Today's date is July 24th, 2018. The time on

the video monitor is 9:47 a.m.

The video operator today is Jefree Anderson,

contracted by Behmke Reporting and Video Services,

subcontracted by Diversified Reporting Services,

Incorporated.

This video investigation is taking place at 44

Montgomery Street, Suite 2800, San Francisco,

California.

The court reporter today is Carol Worsdell,

certified shorthand reporter, contracted by Diversified

Reporting Services, Incorporated.

Counsel, please voice identify yourselves for

the record.

MR. COHN: My name is Michael Cohn. I am the

chief compliance officer and deputy general counsel at

Fortress, Mr. Hourigan's employer.

MR. POPESCU: I am Alex --

MR MITCHELL: Why don't you both -- why don't

you both --

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MR. COHN: Go ahead.

MR. POPESCU: I am Alex Popescu. I work at

Fortress Investment Group as well. I am Michael

Hourigan's employer. My title is counsel and director

of compliance for Fortress's credit business.

MR MITCHELL: Great. And we are doing this by

video conference in Washington, D.C. I am Brent

Mitchell. I am an attorney in the enforcement division

of the SEC.

I will have my colleagues introduce ourselves,

but the three of us are all officers of the Commission

for purposes of this investigation.

MR. MURTHA: James Murtha, Division of

Enforcement.

MR. SCHLEGELMILCH: Stephan Schlegelmilch. I

am in the trial unit in the division of enforcement.

MR MITCHELL: And then we also have two

interns who are here, Kara Krakowar, K-R-A-K-O-W-A-R,

and Tyler Martin.

Jefree, do you have more -- anything more to

your opening?

THE VIDEOGRAPHER: I have no more to my

opening, and there's nothing here that asks for the

deponent to be sworn in, correct?

MR MITCHELL: Right. I can do that here.

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1 Yeah, I can -- I can do that.
 2 Mr. Hourigan, could you -- if you could raise
 3 your right arm, do you swear or affirm to tell the
 4 truth, the whole truth and nothing but the truth?
 5 THE WITNESS: Yes.
 6 Whereupon,
 7 MICHAEL HOURIGAN,
 8 was called as a witness and, having been first duly
 9 sworn, was examined and testified as follows:
 10 EXAMINATION
 11 BY MR MITCHELL:
 12 **Q Can you please state and spell your full name**
 13 **for the record.**
 14 A Michael Hourigan, M-I-C-H-A-E-L.
 15 H-O-U-R-I-G-A-N.
 16 MR. MURTHA: Mr. Hourigan, you can put your
 17 arm down. Thank you.
 18 THE WITNESS: Just making sure.
 19 BY MR MITCHELL:
 20 **Q Yeah, sorry. Sorry.**
 21 **This is an investigation of the United States**
 22 **Securities and Exchange Commission in the matter of Kik**
 23 **Interactive to determine whether there have been**
 24 **violations of certain provisions of the federal**
 25 **securities laws. However, the facts developed in this**

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1 investigation might constitute violations of other
 2 federal or state, civil or criminal laws.
 3 **Prior to the opening of the record, Mr.**
 4 **Hourigan, you were provided with a copy of the formal**
 5 **Order of Investigation in this matter as supplemented.**
 6 **It's the two documents up there that say Formal Order**
 7 **and Supplemental Formal Order. Those will be available**
 8 **for your examination during the course of the**
 9 **proceedings.**
 10 **Have you had an opportunity to review the**
 11 **Formal Order?**
 12 A Yes.
 13 (SEC Exhibit No. 1 was identified
 14 for the record.)
 15 BY MR. MITCHELL:
 16 **Q Prior to the opening of the record, you were**
 17 **also provided with a copy of the Commission's**
 18 **Supplemental Information form, sometimes called**
 19 **Form 1662. A copy of that notice should be in front of**
 20 **you marked as Exhibit 1. Have you had an opportunity to**
 21 **read Exhibit 1?**
 22 A Yes.
 23 **Q Do you have any questions concerning this**
 24 **exhibit?**
 25 A No.

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1 **Q All right. We have already identified your**
 2 **lawyers, and, sorry, the other person --**
 3 MR. MITCHELL: Fernando, you are still in San
 4 Francisco, right?
 5 MR. BERNARDO: Yes.
 6 MR MITCHELL: Great. So Fernando Bernardo,
 7 also a staff member in the SEC enforcement division, is
 8 actually in the room in San Francisco. All right. Any
 9 other preliminaries?
 10 BY MR. MITCHELL:
 11 **Q All right. So, again, we really do**
 12 **appreciate your coming and talking to us. We are going**
 13 **to try to move this along expeditiously, but what we**
 14 **would like to do is sort of start off with your**
 15 **background. If you could just sort of give us your sort**
 16 **of resume level background since high school to walk**
 17 **through your education and the jobs that sort of led you**
 18 **to where you are now.**
 19 A Sure. I grew up in a small town near
 20 Scranton, Pennsylvania. I went to college at the
 21 University of Notre Dame. After that, I worked in D.C.
 22 for a year for Hillary Clinton when she was senator from
 23 New York. I then went to Harvard Law School. I worked
 24 at Morgan, Stanley doing investment banking in New York
 25 for about three years after that, and then I moved out

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1 to the Bay Area to become the COO of a tech hedge fund
 2 in 2010. I did that for about five years, and then I
 3 joined Fortress Investment Group in 2015 where I have
 4 been for the last three years.
 5 **Q What was the name of the tech hedge fund?**
 6 A Thompson P. Capital.
 7 **Q And does it -- I can't track every hedge**
 8 **fund. Are they -- do they still exist?**
 9 A No.
 10 **Q Okay. So did you close down the fund when**
 11 **you -- at roughly the same time you moved over to**
 12 **Fortress?**
 13 A Yes.
 14 **Q When you got to Fortress, what was your job**
 15 **when you got -- what was your role at Fortress when**
 16 **you -- when you got there?**
 17 A I was working in the family office of one of
 18 the founders, Peter Briger, helping to manage all of his
 19 personal investments.
 20 **Q And is that still the job that you have**
 21 **today?**
 22 A Yes.
 23 **Q So you -- sorry, is the family office part of**
 24 **Fortress or separate from Fortress?**
 25 A It is part of Fortress.

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1 MR. COHN: May I interrupt with just one
2 thing? As a technical matter --

3 MR MITCHELL: Oh, yeah, sure.

4 MR. COHN: Yeah, sorry. This is Michael Cohn.
5 As a technical matter, there is no such thing -- we use
6 the term "family office" -- sorry, I think we have
7 discussed this previously. We use the term "family
8 office" to mean the group of human beings who are
9 employees of Fortress who help Pete Briger or, in other
10 cases that are so-called family offices within
11 Fortress -- help them manage their personal investments,
12 but there is no separate entity or organization that is
13 literally the family office. I could become part of
14 Pete's family office simply by someone telling me: You
15 are now part of Pete's family office, and I wouldn't
16 change employers or anything like that. So it's more of
17 a function than it is an actual literal family office.

18 MR MITCHELL: Sounds great.

19 BY MR. MITCHELL:

20 **Q So building right from there, what's the**
21 **function that you do? Sort of describe what your --**
22 **what your role is working for Fortress.**

23 A So my role for the first couple of years was
24 to help manage all of the personal investments that Pete
25 Briger has which range from, you know, investments in

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1 assets and cryptocurrency investments, so I know him,
2 you know, in that context.

3 **Q So he has been at Pantera for the full time**
4 **you have been at Fortress.**

5 A Yes, and even more so, yep.

6 **Q And then there's another person named Drew**
7 **McKnight. Do you know Drew McKnight?**

8 A Yes. He is one of the senior, you know,
9 members of Pete's credit fund team and is I think on the
10 management committee of the firm as well, so he's -- you
11 know, a senior partner level guy at Fortress.

12 **Q So earlier you talked about crypto assets or**
13 **sort of where you are specialized today. I just want to**
14 **sort of make sure that you and I are using the same kind**
15 **of terms. We are going to talk today about the Kin**
16 **token that Kik Interactive sold or bitcoin or ether or**
17 **things like that. When you talk about those kinds of**
18 **things, what do you sort of -- in your daily business,**
19 **is there a term you use for those kinds of things?**

20 A I would refer to them as digital assets, but
21 cryptocurrency is just fine, too.

22 **Q Digital assets.**

23 A Either one is fine.

24 **Q Sounds great. So what's your experience with**
25 **digital assets?**

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1 Fortress funds, investments in external -- externally
2 managed funds, as well as direct investments in startup
3 companies. For the last year or so, I have been
4 primarily focused on the cryptocurrency markets and the
5 investments that we make and that we have made in that
6 space. So that's been my primary focus for the last
7 year or so.

8 **Q And who do -- who do you work for?**

9 A I work directly for Pete.

10 **Q Who do you report to?**

11 A To Pete.

12 **Q And I'm sorry, and Pete Briger is the founder**
13 **of Fortress that you were discussing before.**

14 A One of them, yes.

15 **Q We are going to talk about some other folks**
16 **during the -- during our conversation today. One of**
17 **them is named Dan Morehead. Do you know Dan Morehead?**

18 A Yes.

19 **Q So who is Dan Morehead?**

20 A Dan Morehead I believe has been friends with
21 Pete since college, and he was previously I think the
22 CFO of Tiger Management which is a huge, you know,
23 global macro hedge fund. He founded a firm called
24 Pantera Capital like, I don't know, maybe five years ago
25 or so which has focused primarily on, you know, digital

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1 A So, you know, I personally invested in
2 bitcoin, you know, a few years ago, and so I had some
3 interest in the area, and then when I joined in my
4 current role, Pete had a substantial amount of bitcoin
5 in the portfolio and also had some other investments
6 related to that space, so I had a great opportunity to
7 learn a lot about, you know, that new asset class in the
8 last couple of years, and then as these new, you know,
9 forms of digital assets and companies related to them
10 emerged last year, I took a great interest in that and,
11 you know, have developed a little bit of a -- of a
12 specialty in it along the way, although it's a very
13 nascent market so, you know, I think everyone is just
14 kind of learning as they go.

15 **Q When you say that -- I want to sort of try to**
16 **focus you on the time when you were considering whether**
17 **to purchase Kin tokens say in the early summer of last**
18 **year. At that point of -- in terms of the portfolio you**
19 **are managing, how much of that was in digital assets?**

20 A As a percentage of the overall portfolio of
21 Pete or --

22 **Q Percentage -- yeah, well, both actually. Do**
23 **you remember what -- how much sort of value you had in**
24 **digital assets roughly at that time, by that time?**

25 A You know, the market is so volatile, I don't

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1 recall the percentage. It changes quite a bit on a
2 daily basis so I don't really know.

3 **Q What about amount? Did you have millions of**
4 **dollars or hundreds of thousands of dollars or --**

5 A Millions.

6 **Q So the office had millions of dollars in**
7 **digital assets at that point. And was it sort of in a**
8 **range? Was it more or less -- do you remember whether**
9 **it was more or less than ten percent of the whole**
10 **portfolio?**

11 A Last summer, it would have been less.

12 **Q And was there a -- was there sort of a reason**
13 **why the office was investing in these assets? What**
14 **were -- was there an investment thesis or a reason to**
15 **invest in these?**

16 A Yeah. We view it as being on the cutting
17 edge of the intersection of finance and technology, so
18 being a huge global financial firm and then also being
19 here in -- you know, in Silicon Valley in the Bay Area
20 where, you know, it's kind of the center of tech, we saw
21 that convergence, and, you know, we felt like, you know,
22 we could -- we could develop a pretty good expertise in
23 it.

24 **Q The investments that you had in digital**
25 **assets, did you have a horizon for them? Were they --**

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1 **you know, generally did you have a feeling for how long**
2 **you wanted to hold things or what -- how you decide**
3 **what -- when to sell them?**

4 A Yeah. I mean we view it as a longer term
5 trend, so I think the intention with any of these is to
6 hold them for longer duration but, you know, the market
7 is very volatile and, you know, it's risky, so when you
8 have opportunities to, you know, recover your cost basis
9 or take profits, you have to be opportunistic about it.
10 So I'd say a longer term view in general but flexible.

11 **Q We are going to talk at some point about a**
12 **digital -- I'm sorry, a corporate entity called PB**
13 **Digital. Do you know PB Digital?**

14 A Yes.

15 **Q What is that?**

16 A That was an LLC that was formed to allow Pete
17 and some other friends of his at the firm and a couple
18 outside the firm to invest in this deal, you know,
19 alongside of him.

20 **Q So was -- PB Digital was created for the**
21 **Kik -- for the investment in Kin tokens?**

22 A Well, I wouldn't say specifically or only for
23 that purpose, but it was -- it was a vehicle -- it was
24 the vehicle that invested in the deal ultimately.

25 **Q Does that vehicle own things other than Kin**

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1 **tokens?**

2 A I think along the way it made investments in
3 other digital assets as well, but I don't recall if that
4 was the case or not. I think it may have, though.

5 **Q And does the office have other legal entities**
6 **through which it invests other than PB Digital?**

7 A Yes, many. That's why I'm not totally sure
8 on that, but yes.

9 **Q And I apologize. I always forget. LLC's**
10 **have members, is that right?**

11 A Yes.

12 **Q LLC's have members.**

13 A Right.

14 **Q And the members of -- sorry. Is Pete Briger**
15 **a member of PB Digital?**

16 A Yes.

17 **Q And then there are other members as well --**

18 A Correct.

19 **Q -- who are investing alongside of him?**

20 A Right.

21 **Q And some of those work at Fortress and some**
22 **don't?**

23 A Most do, but yeah, I think there were a
24 couple who don't, uh-huh.

25 **Q Okay. At this -- again, trying to focus you**

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1 **on early summer of 2017, the time you are considering**
2 **the Kin token investment, how were you learning about**
3 **digital assets?**

4 A Well, there's not any one great resource out
5 there to learn, so it's a combination of, you know,
6 websites, Twitter, ReadIt, blogs, talking to people,
7 conferences, so a variety of informational inputs.

8 **Q And do you have friends or professional**
9 **colleagues who talk to you about digital assets as well?**

10 A Yes.

11 **Q And when you are considering making possible**
12 **investments or when you are considering any possible**
13 **investments for the office, what do -- what do you do?**
14 **How do you analyze possible investments in digital -- or**
15 **at that time, how were you going about analyzing**
16 **possible purchases of digital assets?**

17 A We'll generally start with the materials
18 provided by the team. So whether that's a whitepaper or
19 a marketing presentation, you know, read about the
20 backgrounds of the founders and the market or
21 application that they are trying to target and then, you
22 know, sort of see who else is familiar with that space
23 or with that team and start to collaborate and form a
24 view.

25 **Q What kind of factors made offerings**

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1 attractive back then?

2 A Just in general or --

3 Q Yeah.

4 A I think, you know, essentially creating a
5 digital asset is, as its core, a technological
6 undertaking, so I think having a strong technical team
7 is a critical part of it, and then focusing on a market
8 where, you know, a digital asset would seem to have some
9 real application, at least potential, is another
10 important factor.

11 Q All right. What about, were there -- were
12 there factors that sort of when you saw them in
13 offerings that made them not attractive, things that
14 sort of raised red flags or made you less inclined to
15 invest?

16 A Yeah. I think when it -- when it looks more
17 like a team is trying to create some type of blotching
18 element to their business model just for the sake of,
19 you know, trying to raise money this way or try to
20 present themselves within that context, that's kind of a
21 red flag; and also not having a strong, you know,
22 technical team or not targeting a market where this
23 seems like it would be suitable would be another red
24 flag.

25 Q What do you mean by "technical team"?

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1 A You know, like talented engineers
2 essentially, you know, software engineers, blockchain
3 engineers, you know, that having the right type of
4 personnel trying to build the product is very important.

5 Q Did you weigh whether the token was an ERC20
6 token? Did the type of token weigh in your decision?

7 A A little bit. It's helpful. Ethereum, you
8 know, blockchains and ERC20 tokens on it are by far the
9 leader in the market in terms of, you know, having some
10 kind of user base or network effect. So it makes it
11 easier to put it into that category of being an ERC20
12 token rather than something different.

13 Q Do ERC20 tokens have -- does the fact the
14 token is an ERC20 token have any -- did it have any
15 affect on liquidity?

16 A Well, ultimately it did because the exchange
17 that I mentioned ether delta, which is a decentralized
18 like peer-to-peer trading platform, that runs on the
19 Ethereum blockchain as well, so if it had not been an
20 ERC20 token, it would not have been possible to trade it
21 on there, so that was not the intention or something
22 that was even contemplated, but it turned out to be the
23 case.

24 MR. SCHLEGELMILCH: And the token that you are
25 talking about there, you are talking about the Kin

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1 token, correct?

2 THE WITNESS: Yes.

3 BY MR MITCHELL:

4 Q I will just close that out. At some point
5 after you received a set of Kin token in 2017, you sold
6 those token on that ether delta platform?

7 A That's right.

8 Q And we will come back to that.

9 So tell me, what was the market for digital
10 assets like at this point sort of end of the spring,
11 early summer?

12 MR. COHN: Hey, Brent, just to interrupt, just
13 to be clear, Mr. Hourigan didn't sell all the tokens.
14 There was a question earlier about whether they
15 liquidated the Kin position, and there was a -- I just
16 want to make sure in your question that you understand
17 they sold part of it, but not all of it.

18 BY MR MITCHELL:

19 Q Great. Let me just clean that up.

20 Mr. Hourigan, well, we are going to talk more
21 later, in more detail, but just at the high level, at
22 some point, PB Digital made an investment; is that
23 right?

24 A Yes.

25 Q Made an investment with Kik Interactive?

Page 21

1 A Yes.

2 Q And as part of that -- as a result of that
3 investment, did -- PB Digital got some Kin tokens in
4 2017?

5 A Yes.

6 Q Is that right?

7 A Um-hmm.

8 Q And am I right that it will also receive some
9 additional tokens in 2018?

10 A Yes.

11 Q So leaving aside the tokens you have not yet
12 received, do you currently own any of the Kin tokens you
13 received in 2017?

14 A No.

15 Q Okay. And you sold those -- did you sell
16 those tokens on the ether delta platform?

17 A Yes.

18 Q Okay. And we will come back --

19 MR. COHN: Thank you.

20 BY MR. MITCHELL:

21 Q All right. So what was the market for
22 digital assets like, you know, sort of late spring or
23 early summer 2017? What were -- what were you seeing at
24 that time?

25 A The market I would say was brand new and, you

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1 know, kind of wild and, you know, emerging, I would say
2 would be the words I would use to describe it.

3 **Q Did you see -- before Kik, were you aware of**
4 **any projects where someone sold tokens and then the**
5 **tokens went up in value?**

6 A Yes. There was a lot of media attention
7 around those things happening, so that was, you know,
8 one thing that caused a lot of people to get focused on
9 it as you saw these big outcomes in the market.

10 **Q Okay. So at that point, say, again end of**
11 **spring or early summer 2017, did the folks connected to**
12 **PB Digital understand that they could make money by**
13 **buying digital assets?**

14 A I think so, yes.

15 **Q And what about sort of more in general with**
16 **other people you knew who were watching the market? Did**
17 **you talk -- did your -- sorry, did your compatriots who**
18 **were watching the market or who you talked to, did they**
19 **appear to understand that people could make money by**
20 **buying digital assets?**

21 A Yes.

22 **Q And was there risk in buying digital assets?**

23 A Absolutely.

24 **Q And so what kind of risk did you see?**

25 A There was risk in, you know, the execution of

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1 **when you were trying to determine if something had --**
2 **some digital asset had the kind of profile that looked**
3 **attractive to you?**

4 A Well, I think if -- if the targeted, you
5 know, user base sort of fits the demographic of, you
6 know, what I'm describing where it tends to be younger,
7 it tends to be, you know, digital product or service,
8 you know, sort of native digital application, and if the
9 creation or transfer of value within that digital world,
10 you know, makes sense, which a lot of times it doesn't.
11 In this case I thought it did, but --

12 **Q Okay. And we will come to Kik.**
13 **Yeah, go ahead.**

14 MR. SCHLEGELMILCH: During this same time
15 period, spring, summer 2017, other than Kin -- and I
16 don't need an exhaustive list -- but other than Kin,
17 were there other digital assets that you were investing
18 in?

19 THE WITNESS: Yes. We did -- we did a few of
20 them.

21 MR. SCHLEGELMILCH: Can you -- can you tell us
22 what they are or what they were? And again, I don't
23 need an exhaustive list. I'm just sort of looking for
24 sort of the species of digital assets that were
25 interesting to you or worthwhile in investing in.

Page 23

1 the -- you know, just the development of the business
2 plan or the, you know, creation of the digital asset.
3 There was risk in, you know, liquidity, whether it would
4 ever come or not. There was risk in, you know, the
5 product or service being created, you know, ever getting
6 any real traction or validity in the market. So, yeah,
7 there's -- there's risk all around.

8 **Q And did you have an investment thesis about**
9 **digital assets at this time period? Did you have a**
10 **thesis about what was going to happen or what was good**
11 **to invest in? What was your overall thesis about the**
12 **digital asset market?**

13 A I mean it was early in its development at the
14 time in terms of thesis, but I think the thesis
15 essentially is that, you know, we are all sort of
16 increasingly living in a digital world in terms of how
17 we spend our time and attention. The younger someone
18 is, the more pronounced that effect is and, you know,
19 having assets that exist in a purely digital form could
20 have real value, even though they don't have any
21 representation in the physical world; and so looking for
22 the type of digital assets that could have value within
23 that framework is sort of one of the things that we look
24 to in terms of informing our investment thesis.

25 **Q And how did you -- what were you weighing**

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1 THE WITNESS: And what timeframe are we
2 talking about here, roughly?

3 MR. SCHLEGELMILCH: Spring, summer 2017.

4 THE WITNESS: There was another one that we
5 invested in out of the UK which is called FunFair which
6 is a blockchain-based online gaming or casino platform.
7 I'm trying to think what other ones we did in the
8 summer. That was pretty much it. I think I just recall
9 those two.

10 MR. SCHLEGELMILCH: What about any investment
11 prior to Kin? So Kin was in September 2017?

12 MR. MITCHELL: No, they invested in June.

13 MR. SCHLEGELMILCH: Okay. So prior to Kin in
14 June of 2017, it was maybe just FunFair.

15 THE WITNESS: I would say that was roughly
16 concurrent with this, but yeah, they were around the
17 same, those two.

18 MR. SCHLEGELMILCH: And did you have a holding
19 in Ether or Litecoin --

20 THE WITNESS: Yes.

21 MR. SCHLEGELMILCH: -- or Bitcoin at this
22 point?

23 THE WITNESS: Bitcoin we had a large holding
24 for years. Ether, we bought in 2017 as well. So yes,
25 we had an Ether holding.

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1 BY MR MITCHELL:
2 **Q What about Litecoin or any others like that?**
3 MR. SCHLEGELMILCH: Doge.
4 THE WITNESS: We didn't have holdings in those
5 but, you know, we certainly looked at them closely and
6 were aware of them.
7 BY MR MITCHELL:
8 **Q Okay. So at some point, you heard about a**
9 **company called Kik Interactive?**
10 A Yes.
11 **Q How?**
12 A We were introduced to the company by Dan
13 Morehead.
14 **Q What did -- what did you hear from Mr.**
15 **Morehead?**
16 A He said that, you know, this was a
17 well-funded venture-backed startup that had been around
18 for, you know, quite a few years and had a large user
19 base of mostly younger people, but that it was having a
20 tough time competing against, you know, the Facebook's
21 of the world, and that they had this plan to incentivize
22 users and, you know, sort of stimulate their activity on
23 the network by issuing these new digital tokens which
24 would compensate them for their contributions to the
25 platform.

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1 **Q All right. So what did you guys -- once you**
2 **heard about -- once you heard from Mr. Morehead, what**
3 **did you guys do? I'm sorry, what did the folks you work**
4 **with do?**
5 A We said that we would like to learn more
6 about it, and so he put us in touch with them, and then
7 we had a series of, you know, phone calls and a meeting
8 to learn more about it.
9 **Q Okay. So let's just sort of walk through**
10 **those. Tell me what you remember. How many phone calls**
11 **are you thinking about? Eventually there was a meeting;**
12 **is that right?**
13 A Eventually there was a meeting. Yeah, the
14 phone calls before the meeting I think were, you know,
15 maybe just a couple. It was sort of we wanted to meet
16 them in person and see -- hear the -- hear the plan from
17 them and make an assessment from there, so....
18 **Q So in the first -- in the phone calls before**
19 **the meeting, were you on the phone?**
20 A Yes.
21 **Q Who -- who else was on the phone?**
22 A You know, I don't recall. I had a lot of
23 contact after our initial meeting with Tanner Philp. He
24 was kind of my primary point of contact there, and I had
25 a little bit with Ted Livingston, the CEO, but before

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1 our meeting I don't recall who I spoke with or even that
2 much about those conversations. It was just sort of
3 leading up to that meeting.
4 **Q Okay. Did they also send you any documents?**
5 A I don't recall if they were sent before or
6 after the initial meeting.
7 **Q Okay. Do you remember what day the initial**
8 **meeting was?**
9 A I don't.
10 **Q Okay. All right. Well, I'm going to have --**
11 **I'm going to have Fernando mark as what I think would be**
12 **Exhibit 73, a document, and give you a copy of it. I**
13 **apologize. I had him just make one copy of the**
14 **documents so if you could look at it and sort of show it**
15 **to your lawyers, too. You guys can take the time.**
16 **That's SEC-PBDigital-E-0000348 to 351. So if the court**
17 **reporter could mark that, and then you can look at it**
18 **and show it to your lawyer as well. On its face, it**
19 **appears to be an e-mail chain that starts on June 1st**
20 **and goes to June the 2nd, 2017.**
21 (SEC Exhibit No. 73 was marked
22 for identification.)
23 BY MR MITCHELL:
24 **Q Great. If you guys want to look at that, my**
25 **first question to you, Mr. Hourigan, is going to be: Do**

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1 **you recognize this document?**
2 A Let me just take one minute here. Sorry.
3 **Q Yeah. No, absolutely. I apologize. I**
4 **didn't think through how many copies to make.**
5 A Okay. I'm looking at this now.
6 **Q Sounds great. So my first question is: Do**
7 **you recognize the document?**
8 A Yes.
9 **Q Okay. Is this an e-mail that Pete Briger**
10 **sent a bunch of people at Fortress, including you?**
11 A Yes.
12 **Q And was he forwarding an e-mail from Dan**
13 **Morehead with the term sheet for a potential investment**
14 **in investment with tokens from Kik Interactive?**
15 A Yes.
16 **Q Sitting here today, is this -- do you**
17 **remember, is this the first time you have seen a term**
18 **sheet, if you remember?**
19 A Probably, yes. I don't recall. It's
20 possible that I saw it beforehand, but that -- that
21 would make sense, yeah.
22 **Q And, again, what did people in your office**
23 **think of this idea once you got the term sheet?**
24 A They thought that it was interesting. I mean
25 it -- we have a lot of respect for Dan and his firm and

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1 his expertise in the space and, you know, we were aware
2 of these ICO's or token sales that were taking place in
3 the market, and so, you know, I think the initial
4 reaction was that this looked interesting and we wanted
5 to learn more about it.

6 **Q What were you aware of with other ICO's that
7 made this seem attractive?**

8 A Well, there was just a lot of media attention
9 around the ICO phenomenon, and that this was a new way
10 for companies -- you know, tech companies to, you know,
11 issue these digital assets on the blockchain and a way
12 to participate in that and so, you know, we were curious
13 to learn more about it through this -- through this
14 opportunity.

15 **Q And what did -- I guess what did you do to
16 consider the opportunity?**

17 A I don't remember how much time elapsed, but
18 at some point relatively soon after this introduction,
19 we met with the team from Kik to learn more about it.

20 **Q Okay. I will comment on the meeting in a
21 second. On this term sheet, though, this June document,
22 can I have you turn to the page that ends -- the Bates
23 number ends in 350?**

24 A Um-hmm.

25 **Q Do you see the page that ends in 350?**

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1 A Yes.

2 **Q Okay. At the time that you got this term
3 sheet, was Kik telling potential investors that they
4 were aiming to do a -- sort of launch the Kin token by
5 September of 2017?**

6 A I don't remember that particular aspect or
7 representation that you are referring to on the timing
8 of it.

9 **Q Was there any discussion at this stage of
10 when people thought that they would launch the Kin
11 token?**

12 A I remember in our meeting them describing the
13 difficulties of building this, given the scale of their
14 user base and the amount of activity they have on their
15 network relative to the constraints of the Ethereum
16 blockchain, but I don't recall a timeline or, you know,
17 a lot of -- you know, any focus on that.

18 **Q Before the meeting, did you review any -- any
19 written documents? Any other written documents, I mean
20 obviously other than the term sheet we just saw?**

21 A I don't think so.

22 **Q Did you read the whitepaper before the
23 meeting?**

24 A Yes.

25 **Q Anything other than the whitepaper?**

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1 A I don't think so. I read around about, you
2 know, Kik and the history of it and the venture funding
3 they got and that sort of thing, but I don't remember
4 any other materials.

5 **Q What did you take away -- what did you take
6 away from the whitepaper that seemed important?**

7 A The way that they described that this digital
8 asset would be used in the network among their large
9 user base and how it would incentivize, you know, the
10 people to contribute and participate more actively.

11 **Q You mean the user base on the -- on Kik's
12 messaging app?**

13 A Right.

14 **Q So one of the things that was important to
15 you was that Kik said that it would allow people to use
16 Kin tokens on its messaging app?**

17 A Right.

18 **Q Why?**

19 A Because there was this sort of thesis of like
20 all the social media that everyone spends so much time
21 on. You know, it's free to use, but you are also
22 contributing a lot of content, whether it's like your
23 photos or what you are doing and different comments and
24 likes and emojis and all of this kind of stuff, but you
25 don't actually receive anything for your contributions.

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1 It's sort of just free to use the platform, and so their
2 idea was that given that the users of the network are
3 the ones creating most of the value of the experience,
4 you could create these tokens which would reward them
5 for their contributions to the network.

6 **Q And you -- and you thought that would -- how
7 did you think that would affect Kin tokens if you could
8 use them in that way? What would happen -- what would
9 be the effect on Kin tokens?**

10 A We thought that if they could become the
11 currency within that Kik ecosystem, that they -- that
12 those tokens could become very valuable given how big
13 their user base is and how much activity there is on it.

14 MR. SCHLEGELMILCH: Did you have an
15 expectation that you or Fortress would be
16 participating -- would be a participant in an ecosystem?

17 THE WITNESS: We played around with Kik just
18 to see how it would work or kind of -- it was not a
19 product any of us had previously used so, you know, we
20 needed to understand that a little bit better to kind of
21 compare it to WhatsApp or Facebook or the other things
22 in the market that we are more familiar with. So having
23 never used a service before, I don't know that I
24 intended to use the token, but I certainly was trying to
25 understand how someone would.

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1 MR. SCHLEGELMILCH: I guess my question is a
2 little bit different. So did you expect that you were
3 going to be -- you or Fortress was going to be creating
4 content for this social network?

5 THE WITNESS: We weren't planning to, no.

6 MR. SCHLEGELMILCH: And okay.

7 BY MR MITCHELL:

8 **Q Were you planning to buy content or anything**
9 **else with the Kin tokens?**

10 A I mean they hadn't created anything yet, so
11 it's hard to say like no, we definitely wouldn't have,
12 but it wasn't -- that wasn't our intention at the time.

13 MR. SCHLEGELMILCH: Thank you.

14 BY MR MITCHELL:

15 **Q Fernando, could you mark a document that ends**
16 **in 86. This again, I will just say for the record, is a**
17 **multipage document with the Bates number**
18 **SEC-PBDigital-E-0000086 through 95, and on its face, the**
19 **first page has an e-mail that appears to be from you on**
20 **June 2nd, 2017. So if the court reporter can just mark**
21 **it and then give it to you, and you and your lawyers can**
22 **look through it, and tell me when you are ready.**

23 My first question is going to be: Do you
24 recognize this document?

25 (SEC Exhibit No. 74 was marked

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1 **Q Did you write that section?**

2 A Yes.

3 **Q And then the rest of it is the Blog post that**
4 **you were providing everybody a copy of?**

5 A Correct.

6 **Q And did the part that you write fairly**
7 **describe the market as you understood it at the time?**

8 A Yes.

9 **Q Looking back on it, is there anything that**
10 **you look at there that you think boy, that was just**
11 **wrong, like I got this wrong back then?**

12 A Not really.

13 **Q Okay. So at the time you sent this e-mail,**
14 **you understood that ICO's were a new funding vehicle for**
15 **tech companies?**

16 A Um-hmm.

17 **Q I apologize. The court reporter needs to**
18 **sort of hear people say words, so you can just answer**
19 **yes or no for us.**

20 A Yes.

21 **Q Okay. So at the time you sent the e-mail,**
22 **you understood that ICO's were a new funding vehicle for**
23 **tech companies?**

24 A Yes.

25 **Q And then in your e-mail, you described a VC**

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1 **for identification.)**

2 THE WITNESS: Yes, I recognize this.

3 BY MR. MITCHELL:

4 **Q Okay. What is this?**

5 A This is --

6 MR. COHN: What's Exhibit 74?

7 THE WITNESS: This is an e-mail that I sent
8 out to the same group that received the previous
9 communication that we have just discussed where I was
10 trying to explain, you know, a little bit more about
11 what ICO's are, and then I posted a Blog that had been
12 recently published that was getting a lot of attention
13 in the -- in the media.

14 BY MR MITCHELL:

15 **Q And did you send this e-mail as part of**
16 **the -- the discussion about weighing the Kin token**
17 **offering?**

18 A Yes.

19 **Q And is the part on the first page in the**
20 **first maybe four or five paragraphs that are sort of**
21 **right underneath the to/from/send/subject line?**

22 A Um-hmm.

23 **Q Do you see that? Do you see where it starts**
24 **last weekend and runs down through the bold thesis?**

25 A Yes.

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1 **back company called Brave that had done an ICO?**

2 A Yes.

3 **Q Is that right?**

4 A Um-hmm.

5 **Q And then you note -- you noted the**
6 **appreciation of the tokens after the initial offering?**

7 A Yes.

8 **Q And why did -- why mention that?**

9 A So that ICO was probably the highest profile
10 one in the market up to that point. The founder of that
11 company is a very well known technologist, and I saw
12 some similarities to Kik in terms of Brave had already
13 raised venture money. It was smaller, but they had
14 raised venture money. They had a user base. They had
15 a, you know, talented technology team, but they were
16 issuing these tokens as a new way to fund the growth of
17 their -- of their business.

18 **Q And their token had appreciated in value**
19 **after their offering.**

20 A It did, and that was what really got, you
21 know, a lot of media attention was that rise in value
22 after the -- well, actually how quick they raised the
23 money in the offering was, you know, really, you know,
24 noteworthy, and then the appreciation afterwards was
25 another thing that was written about.

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1 Q So at the time you sent this e-mail, you
2 understood that tokens could appreciate in value --

3 A Yes.

4 Q -- after they were initially issued. Did you
5 need Kik to explain that to you?

6 A No.

7 Q I'm going to put that down.

8 At some point did you receive a PPM, like a
9 private placement memo?

10 A I don't recall.

11 Q Okay. The meeting -- well, I guess what
12 happened next? You had this June 2nd e-mail. Do you
13 remember whether the next thing was -- well, what do you
14 remember? What happened next? Let me just start with
15 that.

16 A The next thing that I remember was that they
17 came out and we met with them, the founders.

18 Q Okay. So where did you meet with them?

19 A We met with them in our San Francisco office
20 here at One Market.

21 Q And who was there?

22 A I remember the CEO, Ted Livingston, Tanner
23 Philp who I mentioned before, and then from our group it
24 was Pete, me, Drew McKnight, Brian Nicholson who is
25 another one of our colleagues in the office. I don't

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1 Q Okay. And what was their -- what was the --
2 sorry, did he have -- did he -- was it just oral or did
3 he have written stuff to share with you as well?

4 A I think it was just oral.

5 Q Okay. No slides or, you know, or --

6 A I don't remember that, no, huh-uh.

7 Q Okay. So did he describe to you what Kik was
8 planning to do?

9 A Yeah, that they were going to create this
10 token that could be used in their ecosystem to
11 incentivize people to contribute -- to contribute or
12 create content or to engage with the content posted by
13 others, and that it would be a way of rewarding users
14 and kind of aiming to make the service, you know, better
15 than free, where the other -- you know, the Facebooks
16 and the other larger ones are free, but they felt like
17 they could make this so that you could actually get paid
18 for your contributions which we thought was, you know,
19 pretty compelling.

20 Q So when you were just saying an ecosystem
21 there, was he describing a Kik app?

22 A Yeah, the Kik app and the way that they would
23 layer in this new, you know, token, you know, economy
24 into it to incentivize people.

25 Q So he was -- he was describing a way that Kik

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1 remember if there was anyone else, but I remember those
2 guys.

3 Q Was there anybody on the phone?

4 A I don't think so.

5 Q There's a -- there's a -- do you know a
6 person named Akshane Najita? Nahita (phonetic)?

7 A Yes.

8 Q Okay. Where does he work?

9 A He works at SoftBank.

10 Q Do you remember whether or not -- do you
11 remember whether or not he participated in this meeting?

12 A I just don't remember.

13 Q All right. So what happened in the meeting?

14 A In the meeting, Kik, which was mainly Ted
15 doing the talking, described, you know, how the company
16 started and the growth that they have had and, you know,
17 the challenges that they have had against the larger
18 competitors in the space, especially Facebook and
19 WhatsApp and that they, you know, felt like they needed
20 to do something new to compete with them more
21 effectively. They had some previous interest in
22 blockchain technology both personally and business-wise,
23 and they saw this as a way to potentially, you know,
24 level the playing field and allow them to compete more
25 effectively against Facebook.

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1 planned to incorporate Kin tokens or transactions with
2 Kin tokens into Kik's existing messaging app.

3 A Right.

4 Q Okay. Did he -- did anyone talk to you about
5 sort of their planned -- what their plan was in terms of
6 how they would -- how they would do the sale and what --
7 when they would do the sale?

8 A I remember the figure of \$100 million, but I
9 don't remember the timing or the -- you know, the
10 structure of the process.

11 Q But in that meeting, they said that they were
12 looking to raise \$100 million?

13 A Yes.

14 Q And did they talk to you about a concept or a
15 document called a SAFT, capital S-A-F-T?

16 A It was mentioned. I don't remember
17 discussing it much, but it was -- it was mentioned.

18 Q Did -- was there a discussion about a -- like
19 how Pete Briger's group would -- how you would invest,
20 like what the terms of the investment would be?

21 A Not in great detail. I mean we would be
22 investing alongside everyone else with the same, you
23 know, terms, and we would receive a portion of the
24 tokens whenever they were created, you know, pro rata
25 based on our contribution amount. So it wasn't -- there

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1 wasn't -- we talked mostly about the plan for the -- for
2 the company more so than the details of the deal.

3 **Q Was the idea that you discussed that you**
4 **would invest money sort of at that point or at some**
5 **point in the summer and then receive tokens later in the**
6 **year?**

7 A Yes.

8 **Q And was there discussion then about sort of**
9 **when -- like how Kik was going to decide when it could**
10 **sell tokens to the general public?**

11 A There may have been a little bit of
12 discussion about that, but it wasn't -- it was not a
13 focus of ours.

14 **Q What do you remember about it?**

15 A I remember talking about the difficulty or
16 the challenges of integrating this token into their
17 large user base, given the constraints of the Ethereum
18 blockchain. In terms of a timeline for that, I don't --
19 I don't remember anything being sort of -- sort of
20 promised or even, you know, laid out.

21 **Q Was that part of your investment sort of**
22 **analysis, sort of the idea of when you would get tokens?**

23 A It was, but I don't remember trying to like
24 pin down exactly when -- when that would be.

25 **Q Was there a discussion about whether the**

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1 A He just said for the amount of users they
2 have and the amount of activity they have on the
3 network, it would just cripple the Ethereum blockchain
4 to try to process all of that through it, and so they
5 were trying to figure out a way to do like a smaller
6 beta test or find some type of technological work around
7 that would allow them to, you know, use the tokens in
8 the app and then have them sort of port over to the
9 Ethereum blockchain somehow. They were -- they were
10 struggling with how to -- how to do that.

11 **Q And who did you -- did you have an**
12 **understanding of who was going to sort of try to address**
13 **that problem?**

14 A I think it was -- you know, Ted was the main
15 guy we were speaking with, so I mean it was -- it was
16 mostly him.

17 **Q And -- sorry, and people at Kik were going to**
18 **try to solve that problem.**

19 A Yes.

20 **Q Did they expect you or other investors to**
21 **help solve that problem?**

22 A Only in just maybe talking through it a
23 little bit, but no, not substantively.

24 **Q Did they talk about what Kik would do after**
25 **the Kin tokens had been sold to the public?**

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1 **tokens, once they were issued by Kik to the public,**
2 **would be liquid?**

3 A No, I don't think we talked about that.

4 **Q Did you talk about secondary exchanges at**
5 **all?**

6 A Subsequent to this initial meeting, I did
7 have quite a few conversation with them about that, but
8 not -- in the initial meeting, I don't -- I don't
9 remember that being part of it.

10 **Q Okay. Well, let me just move to that for a**
11 **second. The conversations you are thinking of, are they**
12 **after the meeting but before you made the investment?**

13 A No, they were after we made the investment
14 and after we received the tokens. My questions were
15 kind of like: Are you going to get listed on an
16 exchange and when? And it was -- you know, we never
17 really got a clear answer on that, and as far as I know,
18 they still have never been listed on an exchange, so I
19 guess maybe that's why.

20 **Q Okay. So going back to the meeting, was**
21 **there -- sorry, was there discussion about sort of the**
22 **Ethereum blockchain and whether Kik would be able to run**
23 **the Kin project using the Ethereum blockchain?**

24 A Yes, there was.

25 **Q What was that?**

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1 A Kik would, you know, try to integrate them
2 into their app was the -- that was the main gist of it.

3 **Q And also to solve this technological issue**
4 **about the Ethereum blockchain having limits?**

5 A Right, which was part of trying to integrate
6 them into the app, you know, figuring out a way to do
7 that or to roll that out.

8 **Q Did you all raise any specific questions in**
9 **the meeting?**

10 A I think we -- you know, we wanted to
11 understand, you know, how this new technology, you know,
12 would potentially sort of reignite the user base of Kik
13 because Kik had raised a lot of money, and they had a
14 lot of users, but they also, you know, were not on a
15 trajectory to be successful given the competition, and
16 so we wanted to understand how this could potentially,
17 you know, reengage a lot of those users that weren't,
18 you know, using the platform much and maybe incentivize
19 some new people to sign up as well.

20 **Q Well, why did that -- why did that weigh in**
21 **your decision of whether or not to buy Kin tokens?**

22 A Well, because ultimately if they, you know,
23 are used in the Kin ecosystem, they presumably would be
24 more valuable than if they were not being used. So the
25 ability to integrate them into that was an important

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1 consideration.

2 MR. SCHLEGELMILCH: And would it be fair to
3 say sort of in the same vein that if Kik went out of
4 business let's say in October of 2017 or November of
5 2017, that the Kin tokens would sort of lose all of
6 their value?

7 THE WITNESS: It would be a big negative for
8 sure. I don't know if they would lose all of their
9 value necessarily, but yeah, based on our investment
10 thesis, that would have been a big negative.

11 BY MR MITCHELL:

12 **Q Fernando, can you mark the document that ends**
13 **in 429 and, again, this is a multipage document with the**
14 **Bates number SEC-PBDigital-E-0000429 to 430 and then**
15 **take a look at it with your lawyer. Just tell me when**
16 **you are ready. On its face, it appears to be an e-mail**
17 **chain where the top e-mail is an e-mail from you to Drew**
18 **McKnight and Pete Briger.**

19 (SEC Exhibit No. 75 was marked
20 for identification.)

21 MR MITCHELL: Sorry, is Michael still reading?

22 MR. COHN: Yeah, I am almost done. Just one
23 second.

24 MR MITCHELL: Perfect. Sounds great. No
25 problem.

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1 MR. MURTHA: You are just off camera, so we
2 can't see what you are doing.

3 MR. MITCHELL: No rush. Take the time you
4 need. My first question is going to be --

5 MR. COHN: We can move the camera, but it's
6 really boring over here.

7 MR MITCHELL: Yeah, I know.

8 MR. COHN: Okay.

9 BY MR MITCHELL:

10 **Q So, Mr. Hourigan, take a look at it. My**
11 **first question is going to be: Do you recognize this**
12 **document?**

13 A Yes.

14 **Q What is it?**

15 A I'm just reading through the sequence here.
16 So this was -- you know, Dan informed us that the terms
17 had changed a bit and that investors were getting cut
18 back. One of the changes in the terms was that there
19 would be a lockup, and so then that forced us to, you
20 know, think about things over that time horizon which I
21 was trying to provide a view on, you know, kind of the
22 pros and cons of Kik on a one- to two-year horizon.

23 **Q And so are the three paragraphs at the top of**
24 **the first page -- is that you writing an e-mail to Mr.**
25 **McKnight and Mr. Briger --**

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1 A Yes.

2 **Q -- sharing some of your thoughts?**

3 A Yes.

4 **Q And did that -- did that, you know,**
5 **accurately capture your thinking at the time?**

6 A Yes, it did.

7 **Q And so the positive that you saw was that --**
8 **I'm sorry, was it a positive that you saw that Kik had a**
9 **real product/user base/VC investor base?**

10 A That was a positive, yes.

11 **Q Can you just say like why? Why was that a**
12 **positive?**

13 A Well, because if they could create this
14 digital asset and then sort of integrate it into this
15 user base that had, you know, I think hundreds of
16 millions of users, that's an easier proposition than
17 trying to create a user base from scratch to use a given
18 product or service. So I felt like that was a good sort
19 of foundation to try to integrate this new digital asset
20 into.

21 **Q And were there negatives that you were**
22 **weighing?**

23 A Well, the negative was that they had raised a
24 lot of money, and like I said before, that when you
25 raise that much money and, you know, you're still sort

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1 of burning through cash and not competing successfully
2 against the bigger incumbents, you know, the trajectory
3 on its own is not good, and so there was a solid
4 foundation there that was attractive, but also, they
5 raised, you know, this large amount of money and sort of
6 burned through it and so, you know, this ICO option was,
7 you know, a way to try to raise money that was better
8 than the other alternatives they had at that time.

9 **Q Did you view the ICO plan as essentially a**
10 **Hail Mary by Kik?**

11 A That was certainly one way to look at it.

12 **Q And what did that mean to you? What were you**
13 **seeing that made it a Hail Mary?**

14 A Well, I think at one time they had enough
15 user growth and sort of attraction among a younger
16 demographic that they thought they could compete toe to
17 toe with Facebook, and with the amount of money they
18 raised and burned through, and in talking with Ted and
19 the team, it was obvious that they were on the losing
20 end of that, and so I think they viewed it and we viewed
21 it as, you know, you have got -- I think -- I think it
22 was a couple hundred million users. You have got a
23 tech, you know, platform that works and a community that
24 is engaged to some extent, and so, you know, you need to
25 go deeper in the play book in terms of taking risk and

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1 trying to do something creative rather than just keep
2 sort of keep banging up against Facebook, you know,
3 which, you know, you are just not going to win that --
4 that battle.

5 **Q When you were weighing purchasing -- making
6 this deal with Kik, did you have access to Kik's
7 financials?**

8 A No.

9 **Q Did you know how much cash Kik had on hand?**

10 A We didn't.

11 **Q Did you know how much revenue it was earning?**

12 A I don't recall that being discussed. Someone
13 may have asked, but that was not my focus, so I don't --
14 I don't remember that.

15 **Q Were you aware of what the trends in users
16 were on the Kik app, you know, whether it was overall
17 the numbers of users or the metrics of users were going
18 up or going down?**

19 A My perception was that it was going down and
20 that it was negative.

21 MR. SCHLEGELMILCH: Having now had a chance to
22 look at your e-mail again, is it fair to say that your
23 sort of overall view of this was that Kik's prospects as
24 a company weren't great long-term, but that because it
25 had a real product, a user base and a VC investor base,

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1 MR. SCHLEGELMILCH: So again, so that Fortress
2 or you could be -- you could exit your position at a
3 profit.

4 THE WITNESS: Correct.

5 BY MR MITCHELL:

6 **Q Okay. So was there some point after the
7 meeting that you had in San Francisco when Kik offered
8 you additional offers to raise sort of the amount of
9 money that your group could invest?**

10 A Towards the end of the process you are
11 referring? In other words, not this e-mail but the --

12 **Q Yeah. After that e-mail I meant.**

13 A I'm sorry, the e-mail that we are looking at
14 now or are you saying subsequent to that?

15 **Q Subsequent to that. I apologize.**

16 A Subsequent to that I remember kind of at the
17 11th hour there was this sudden, you know, availability
18 of, you know, more to buy, which we found, you know,
19 somewhat concerning.

20 **Q How did you hear about the something more?**

21 A I don't remember if it came directly from
22 Kik.

23 I think it might have come through Dan, but
24 they -- I think the -- what they told us was that
25 because of KYC issues with some investors in Russia and

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1 that it should go up in the near term and that you could
2 exit your position at a profit?

3 THE WITNESS: I would say that it should go up
4 in the near term based on its potential to actually
5 work. I mean despite the, you know, negatives which we
6 just discussed in terms of their user base and kind of
7 how it was trending, they did have or I think they still
8 do have, you know, hundreds of millions of people on
9 a -- on a chat platform and a lot of activity; and so
10 trying to, you know, create a digital asset to be used
11 in that has a lot of potential compared to creating a
12 digital asset that has no user base to sort of be
13 integrated into.

14 So it was one part the signalling of this, you
15 know, VC funding they raised and the kind of foundation
16 they have, but the other part of it was that they
17 actually do have that user base and that technology
18 already built out, that, you know, could be an
19 attractive thing to try to integrate this into.

20 MR. SCHLEGELMILCH: You wrote that it should
21 be fairly ease to flip. What did you mean by that?

22 THE WITNESS: That there would be a lot of
23 people that would want to buy these assets once they
24 were, you know, created and out there liquid in the
25 market.

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1 maybe China also.

2 But I seem to remember Russia, that
3 they were sort of cutting out from the sale. There was
4 this extra amount available if we wanted to take it.

5 **Q And did they -- did you decide to take it?**

6 A No. We decided not to.

7 **Q And then do you -- did you talk to -- did you
8 talk to anyone -- any of Kik's outside lawyers at a law
9 firm called Cooley?**

10 A Yes. I spoke with at least one lawyer there.

11 **Q Do you remember that person's name?**

12 A I'm thinking it might have been Nancy, but I
13 don't -- if you said her name, I think I would recognize
14 it, but I don't -- I don't recall.

15 **Q There's a lawyer at Cooley named Nancy
16 Wojtas.**

17 A That's her.

18 MR. MITCHELL: Okay. W-O-J-T-A-S for the
19 court reporter.

20 THE WITNESS: Yes.

21 BY MR. MITCHELL:

22 **Q So tell us about that conver -- sorry, one
23 conversation or multiple conversations?**

24 A We didn't talk much. I don't remember if it
25 was like once or twice, but that was more I think just

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1 administrative in terms of getting paperwork signed and
2 getting through their process. It wasn't much of a
3 substantive conversation.

4 **Q Did anybody at Kik talk to you about sort of**
5 **their legal analysis of the offering or their view of**
6 **whether the Kin tokens were securities?**

7 A I don't think that ever came up.

8 **Q Okay.**

9 **So I guess I'm going to go with what**
10 **happened next?**

11 **You have had these conversations. You**
12 **had the meeting.**

13 **You had some subsequent conversations.**
14 **What did your group do next in terms of the Kik**
15 **proposal?**

16 A We decided to make the investment and we
17 proceeded in, you know, going through that process with
18 them to get the docs signed and get the -- the funding
19 processed, and that was pretty much the end of it from
20 what I remember.

21 MR. MITCHELL: Okay.

22 Fernando, could you have the court
23 reporter mark the document that doesn't have
24 Bates numbers that I think is the executed SAFT
25 contract?

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1 (SEC Exhibit No. 76 was marked
2 for identification.)

3 BY MR. MITCHELL:

4 **Q This is a document that has seven pages and**
5 **numbered one through seven at the bottom. At the -- on**
6 **the second page it says Kin, a product of Kik**
7 **Interactive, Inc., SAFT, S-A-F-T, and then on the back**
8 **pages -- well, why don't you have your lawyer look at it**
9 **and you look at it, and my first question is going to**
10 **be: Do you recognize this document?**

11 A Yes, I recognize this.

12 **Q What is it?**

13 A This is the SAFT that the company provided
14 via Cooley and that we signed I think via, you know,
15 DocuSign or something like that.

16 **Q If you look on the page that has a seven on**
17 **the bottom, is that Pete Briger's electronic signature?**

18 A Electronic, yes.

19 **Q So then after you make the investment, I**
20 **guess sort of what happens -- what happened after that**
21 **in terms of Kik?**

22 A The next thing that I remember was receiving
23 the tokens once they were created and, you know,
24 distributed, had some back and forth with Tanner on, you
25 know, our, you know, wallet address that he was sending

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1 them to, and then just confirming the receipt and that
2 it was the proper amount.

3 **Q Okay.**

4 **And then you got the -- so at some**
5 **point in 2017 you got tokens?**

6 A Yes.

7 **Q And did you receive sort of half the tokens**
8 **that the SAFT made you eligible for?**

9 A I think so, yes.

10 **Q And what did you do with the tokens?**

11 A We just held them in a -- you know, an
12 Ethereum-based wallet as we typically would do, so we
13 didn't do anything with them. We just held them in the
14 wallet that they were received into.

15 **Q And was this -- do you still have them in the**
16 **wallet?**

17 A Well, we sold -- I'm trying to -- I don't
18 remember if we received all of them and that half of
19 them have some type of cryptographic lock on them for a
20 year or if we only received half of them to begin with,
21 but in either event, half of the them of the total that
22 we purchased, we sold eventually.

23 **Q And did -- and then did you -- did you sell**
24 **that half for more than half of your initial investment?**

25 A Yes.

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1 **Q Roughly, what -- what value did you get for**
2 **the Kin tokens that you sold compared to your**
3 **investment?**

4 A I think it was about 4X.

5 **Q 4X the full investment or 4X the half?**

6 A I'm just not sure.

7 Sorry. I have the data,
8 but I just don't know offhand.

9 **Q That would be fine. Sitting here today,**
10 **though, do you think that PB Digital has any basis left**
11 **in this investment?**

12 A No.

13 **Q And do you expect to get more Kin tokens at**
14 **some point later in 2018?**

15 A Yes.

16 **Q Do you have a plan for what you are going to**
17 **do with those tokens?**

18 A We would assess, you know, their progress on
19 billing that's out or implementing it and see what the
20 demand looks like in the market, what the price looks
21 like and make an assessment, but we haven't gotten close
22 enough to it yet to start doing that, so it's hard to
23 say.

24 **Q Whose efforts would you look at? Sorry. In**
25 **your prior -- in your prior -- in the answer you just**

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1 gave you talked about "them." Who were you talking
2 about?
3 A I'm just thinking of, you know, Ted and
4 Tanner and the team at Kik.
5 Q So you will gauge-- your plan is to, when you
6 get the tokens, see how they are doing on the creation
7 of this Kin ecosystem.
8 A Yes.
9 MR MITCHELL: Okay.
10 So we are going to go off
11 the record.
12 It is 11:03 I think in San Francisco. Do I
13 have the time right there?
14 THE VIDEOGRAPHER: One moment. Going off the
15 record, the time is 11:03.
16 (A recess was taken.)
17 THE VIDEOGRAPHER: We are back on the record.
18 The time is 11:08.
19 BY MR MITCHELL:
20 Q Great.
21 Mr. Hourigan, during the break, did
22 you have any substantive conversations about the case
23 with the SEC staff?
24 A No.
25 Q All right.

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1 So I just want to sort of do a
2 couple of -- last couple of questions to make sure that
3 we are -- and then we will be done.
4 When -- when you were having conversations
5 with people at Kik or were there any conversations about
6 when Kik intended to sell the tokens or, you know, what
7 would trigger their ability to sell tokens when they
8 would do it?
9 A When they would do this sale that we
10 participated in or when they would -- I'm not sure I
11 follow.
12 Q Okay.
13 That's okay. When you bought, you
14 purchased using that SAFT contract; is that right?
15 A Um-hmm, yeah.
16 Q Okay.
17 And as part of that, you received the
18 right to obtain Kin tokens at the time that Kik sold
19 those tokens to the general public. Am I right about
20 that?
21 A Yes.
22 Q Okay. So was there any discussion between
23 your group and Kik about when that public sale would
24 happen?
25 A I don't recall discussing that or that being,

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1 you know, something that we focused on at all.
2 Q Was there any --
3 THE VIDEOGRAPHER: Can you move your
4 microphone up higher on your tie?
5 THE WITNESS: Sorry.
6 THE VIDEOGRAPHER: Thank you.
7 BY MR MITCHELL:
8 Q Was there any discussion about something
9 called an MVP or a minimum viable product?
10 A I think they mentioned that as part of their
11 development timeline in terms of trying to roll this out
12 and start integrating it.
13 Like I think I mentioned
14 earlier, some type of beta test or something like that.
15 So I remember that being mentioned, but I don't -- I
16 don't remember the details of it.
17 Q What you are remembering, is that in person
18 or is that on the phone?
19 A In person and then subsequently on the phone
20 just in terms of, you know, how is everything going.
21 Are you guys building it out?
22 You know, I remember them
23 telling me they were working with -- reestimating with
24 other blockchains other than Ethereum, like Stellar.
25 There was one in Israel called Orbs. They were spending

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1 time over there working with different engineers trying
2 to figure out, you know, what's the best way to design
3 this thing.
4 Q And did -- the conversations you are
5 describing about Stellar and Orbs, was that after you
6 had obtained Kin tokens?
7 A I think so. Yeah, I think that was
8 afterwards. That was somewhat more recent.
9 Q Have you spoken to any other people who
10 invested in the Kin offering? Sorry. Obviously you
11 talked to Mr. Morehead.
12 A Yeah, other than them, I don't think so.
13 Q And have you talked to Mr. Morehead about the
14 investment or his people?
15 A Not specifically.
16 I don't remember having
17 any type of in-depth conversation with them, other than
18 just in passing that it was -- you know, that we had
19 gotten them or where it was trading, but nothing --
20 nothing specific.
21 Q And have you spoken to anyone at Kik about
22 the SEC investigation?
23 A No.
24 Q Have you spoken to anyone outside Fortress
25 about the SEC investigation?

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1 A No.

2 Q To the best of your knowledge and -- sorry,

3 don't tell me about anything your lawyer told you, but

4 other than conversations with your lawyer, do you know

5 whether Kik or Kik's attorneys have reached out to

6 Fortress or Pete Briger's group?

7 A I don't know.

8 Not to my knowledge, no.

9 Q Well, we really do appreciate your talking to

10 us.

11 We are really trying to understand this offering,

12 and it has been -- we know it's a pain for you to have

13 to, you know, go to the office and do all of this stuff,

14 and we really do appreciate your doing it because this

15 has been helpful, and it lets us sort of really

16 understand what happened.

17 As part of our normal process we ask the

18 witness, you know, do you -- is there anything you like

19 want to supplement or anything that you said that you

20 think you need to supplement or correct or anything

21 while we are still on the record?

22 A No.

23 MR. MITCHELL: Okay.

24 And then just for your counsel, do

25 either of your counsel have any questions,

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1 you know, clarifying questions or anything else you want

2 to ask the witness?

3 MR. COHN: No. I think we are good. Thank

4 you.

5 MR MITCHELL: Okay.

6 So then we would go off

7 the record, if the videographer could take us off the

8 record.

9 THE VIDEOGRAPHER: All right. This marks the

10 end of the deposition then of Michael --

11 MR MITCHELL: Oh, actually wait one sec.

12 Sorry.

13 THE VIDEOGRAPHER: I'm sorry.

14 BY MR. MITCHELL:

15 Q Sorry, I apologize.

16 We had -- during the break we had mentioned

17 one practical issue.

18 Mr. Hourigan, do you have a

19 subpoena in front of you, still sitting in front of you?

20 A Yes.

21 Q Does it have a label on it with a number?

22 A 72.

23 (SEC Exhibit No. 72 was

24 marked for identification.)

25 BY MR. MITCHELL:

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1 Q Okay.

2 So the subpoena with your name on it

3 has been marked as Exhibit 72.

4 Do you see that there?

5 A Yes.

6 Q Okay. That's it. I'm just literally putting

7 it on the record so that it's clear on the record how

8 that number got there.

9 A Okay.

10 MR. MITCHELL: Okay.

11 Anything else?

12 MR. MURTHA: Is that a copy of the subpoena

13 which you are appearing pursuant to today?

14 THE WITNESS: Yes.

15 MR MITCHELL: Great.

16 Okay. Now I apologize for the

17 false alarm earlier. If the videographer could

18 take us off the record, we'd appreciate it.

19 THE VIDEOGRAPHER: Thank you.

20 This marks the end of the DVD number one in

21 the deposition of Michael Hourigan. We are going off

22 the record, and the time is 11:14.

23 (Whereupon, at 11:14 a.m., the examination was

24 concluded.)

25 * * * * *

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1 PROOFREADER'S CERTIFICATE

2

3 In the Matter of: KIK INTERACTIVE, INC.

4 Witness: Michael Hourigan

5 File Number: HO-13388-A

6 Date: Tuesday, July 24, 2018

7 Location: San Francisco, California

8

9 This is to certify that I, Christine Boyce, (the

10 undersigned) do hereby swear and affirm that the attached

11 proceedings before the U.S. Securities and Exchange

12 Commission were held according to the record, and that

13 this is the original, complete, true and accurate

14 transcript, which has been compared with the reporting or

15 recording accomplished at the hearing.

16

17

18 _____

19 (Proofreader's Name) (Date)

20

21

22

23

24

25

26